IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15521 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

LAXMANBHAI RAMABHAI SOLANKI

Appearance:

MR ND GOHIL, AGP, for Petitioner No. 1-2

MR NIKHIL D JOSHI for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/08/2004

ORAL JUDGEMENT

1.1 By this petition the petitioner-State Government has challenged the judgement and award passed by the Labour Court, Anand in Reference (ICA) No.99/93 dated 20.3.2003 whereby the Labour Court directed the petitioner to reinstate the present respondent with

continuity of service and to pay him 50% backwages.

2.1 The present respondent was working as daily wager under the petitioner no.2 at Khambholaj. The petitioner is an Irrigation Department and some labour work had been provided by the petitioner. The respondent raised a dispute which was referred to the Labour Court and numbered as (LCA) No.99/93. According to the respondent, initially he was appointed on 11.7.1986 and he had worked till 31.10.1988 and the petitioners terminated the services of the petitioner on 31.10.1988 without any reason whatsoever. The Labour Court, after hearing the parties, directed the petitioner to reinstate the respondent with continuity of service and to pay him 50% backwages. It is against the said decision the present petition has been filed.

3.1 Learned counsel for the petitioner submitted that the respondent had himself abandoned his job and that in the present case the respondent was not appointed after following the due procedure of law. He also submitted that the respondent had never completed 240 days in a calendar year. He further raised a contention that Irrigation Department is not an industry.

4.1 Mr. Nikhil Joshi, learned counsel for the respondent submitted that the award passed by the Labour Court is just and proper and passed after appreciating the evidentiary material on record.

4.2 I have gone through the record of the case and I am of the opinion that no infirmity can be found in the judgement of the Labour Court. The contention that the Irrigation Department is not an industry is already decided by the Full Bench of this Court in the case of Gujarat F.P.G. & F.W. Union Vs. State of Gujarat, reported in 2004(2) GLH 302 wherein it is held that Irrigation Department is an "industry". However, I find that grant of backwages to the extent of 50% is without any proper reasoning. Since the respondent is given continuity of service and as he is entitled for all the benefits flowing therefrom, there was no reason to grant 50% backwages, causing burden on the exchequer of the State. Therefore, the award of the Labour Court is required to be modified to the aforesaid extent.

5.1 In the result, the petition is partly allowed. The award of the Labour Court is modified to the extent that the respondent workman shall not be entitled to any backwages. The rest of the award is not disturbed. Rule is made absolute to the aforesaid extent with no order as

to costs.

[K.S. JHAVERI, J.]
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